**Ridge View Industries, Inc., Ltd., d/b/a Pacific Atlas Company *and* Carpenters Union Local 2236, United Brotherhood of Carpenters and Joiners of America.** Case 20–CA–25907

March 29, 1995

## DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS COHEN AND TRUESDALE

Upon a charge and a first amended charge filed by the Union on February 9 and March 22, 1994, respectively, the General Counsel of the National Labor Relations Board issued an order rescinding approval of settlement agreement and complaint on October 27, 1994, against Ridge View Industries, Inc., Ltd., d/b/a Pacific Atlas Company, the Respondent, alleging that it has violated Section 8(a)(1), (3), and (5) of the National Labor Relations Act. Although properly served copies of the charge, first amended charge, and complaint, the Respondent failed to file an answer.

On February 27, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On March 1, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated February 8, 1995, notified the Respondent that unless an answer were received by February 15, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

At all material times through June 7, 1993, Pacific Green Company (Pacific), a California corporation with an office and place of business in San Francisco, California, has been engaged in the manufacture of wholesale furniture. During the 12-month period ending June 7, 1993, Pacific, in conducting its business operations, sold and shipped from its San Francisco, California facility goods valued in excess of $50,000 to Marco Furniture Company, located in California, which in turn sold and shipped those goods directly to enterprises located outside the State of California. At all material times through June 7, 1993, Pacific has been engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. On or about June 7, 1993, the Respondent purchased the business of Pacific, and since then has continued to operate the business of Pacific in basically unchanged form, and has employed as a majority of its employees individuals who were previously employees of Pacific. Based on these actions, the Respondent has continued the employing entity and is a successor to Pacific.

During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, sold and shipped from its San Francisco facility goods valued in excess of $50,000 to enterprises located in the State of California, which in turn sold and shipped those goods directly to other enterprises outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of Pacific (the Pacific unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production employees in the job classifications of frame millman, boring, assembly, sanding, lumber, cutting, and general employees employed by Pacific at its San Francisco, California facility; excluding all other employees, guards and supervisors as defined in the Act.

From about January 1, 1992, until June 7, 1993, the Union was the designated exclusive collective-bargaining representative of the Pacific unit and was recognized as the representative by Pacific. This recognition was embodied in successive collective-bargaining agreements, the most recent of which was effective from January 1, 1992, to December 31, 1994 (the Agreement). From about January 1, 1992, to June 7,

1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Pacific unit employed by Pacific.

The following employees of the Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All production employees in the job classifications of frame millman, boring, assembly, sanding, lumber, cutting, and general employees employed by Pacific at its San Francisco, California facility; excluding all other employees, guards and supervisors as defined in the Act.

Since about June 7, 1993, based on the facts described above, the Union has been the designated exclusive collective-bargaining representative of the unit. At all times since June 7, 1993, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the Respondent's employees in the unit.

On about December 27, 1993, the Respondent, by telling employees that the Union could not do anything for them and that the Respondent's employees would not have union representation after the year was over, informed employees that it would be futile for them to select or to seek to maintain the Union as their bargaining representative.

In December 1993, the Respondent denied employee Refugio Lopez accrued vacation pay, holiday pay, and regular wages. On about December 27, 1993, the Respondent discharged Lopez. The Respondent engaged in this conduct because Lopez assisted the Union and engaged in concerted activities, and to discourage employees from engaging in these activities.

On about June 11, 1993, the Respondent orally agreed to honor and abide by all the terms and conditions of the Agreement. On an unknown date in July 1993, the Respondent failed to continue in effect all the terms and conditions of the Agreement by changing working hours of unit employees. On about November 12, 1993, the Respondent failed to continue in effect all the terms and conditions of the Agreement by changing the method of payment for unit employees. In December 1993, the Respondent failed to continue in effect all the terms and conditions of the Agreement by denying to an employee accrued pay, holiday pay, and regular wages. On about December 31, 1993, the Respondent failed to continue in effect all the terms and conditions of the Agreement by failing to pay yearend bonuses to employees. The Respondent engaged in this conduct without notice to the Union, and the Union did not know and could not reasonably have known of this conduct prior to August 10, 1993. The Respondent engaged in this conduct without bargaining with the Union and without the Union's consent. These terms and conditions of employment are mandatory subjects for the purpose of collective bargaining.

In July 1993 and on November 12, 1994, the Respondent bypassed the Union and dealt directly with its employees in the unit by meeting with employees to obtain their approval for changes in terms and conditions of employment, without notice to the Union. The Respondent engaged in this conduct in July 1993 without the Union's knowledge, and the Union did not know and could not reasonably have known of this conduct prior to August 10, 1993. These subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

The Agreement contains a reopener provision for wages and pension benefits permitting those subjects to be renegotiated in 1994. On an unknown date in early January 1994, pursuant to the reopener provision, the Union requested that the Respondent bargain with the Union concerning wages and pension benefits for employees in the unit. Since about January 12, 1994, the Respondent has failed and refused to bargain collectively about the subjects set forth above, which subjects relate to wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining.

Since about January 18, 1994, the Union has requested that the Respondent process grievances filed under the Agreement, and since that date the Respondent has failed and refused to bargain collectively about them. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining.

Since about March 2, 1994, the Respondent unilaterally altered the established practice of permitting union representatives access to the Respondent's facility and has been denying employees, during nonworking time, contact with a union representative. This subject relates to wages, hours, and other terms and conditions of employment of the unit and is a mandatory subject for the purposes of collective bargaining. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

## CONCLUSIONS OF LAW

1. By informing employees that it would be futile for them to select the Union, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By denying Employee Refugio Lopez accrued vacation pay, holiday pay, and regular wages and by dis-

charging him, the Respondent has been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and (1) and Section 2(6) and (7) of the Act.

3. By failing to continue in effect all the terms and conditions of the Agreement without bargaining with the Union and without the Union's consent, by bypassing the Union and dealing directly with its employees, by failing and refusing to bargain collectively about wages and pension benefits and grievances, and by unilaterally altering the established practice regarding access of union representatives to the Respondent's property and denying unit employees contact with union representatives, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

## REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Refugio Lopez and denying him accrued vacation pay, holiday pay, and regular wages, we shall order the Respondent to offer Lopez immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

Having found that the Respondent has failed to continue in effect all the terms and conditions of the Agreement for unit employees relating to working hours, the method of payment, accrued pay, holiday pay, and regular wages, and payment of yearend bonuses, without notice to or bargaining with the Union and without the Union's consent, we shall order the Respondent to honor the terms of the Agreement, and to make whole the unit employees for any losses resulting from its failure to do so. Backpay shall be calculated in accord with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F 2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Furthermore, having found that the Respondent has unilaterally altered the established practices regarding access of union representatives to the Respondent's facility and denied unit employees contact with a union representative during nonworking time, without prior notice to the Union or affording it an opportunity to bargain, we shall order the Respondent to restore the status quo ante with regard to these previously established practices.

Finally, having found that the Respondent has failed to bargain with the Union over wages and pension benefits pursuant to the reopener provision and over grievances filed under the Agreement, we shall order the Respondent to, on request, meet and bargain with the Union with respect to these subjects, and, if an understanding is reached, embody that understanding in a signed agreement.

## ORDER

The National Labor Relations Board orders that the Respondent, Ridge View Industries, Inc., Ltd., d/b/a Pacific Atlas Company, San Francisco, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Informing employees that it would be futile for them to select or to seek to maintain the Carpenters Union Local 2236, United Brotherhood of Carpenters and Joiners of America as their bargaining representative.

(b) Denying employees accrued vacation pay, holiday pay, and regular wages or discharging them because they assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

(c) Failing to continue in effect all the terms and conditions of the Agreement by changing working hours of unit employees, changing the method of payment for unit employees, denying unit employees accrued pay, holiday pay, and regular wages, or failing to pay yearend bonuses to unit employees, without bargaining with the Union and without the Union's consent. The unit includes the following employees:

> All production employees in the job classifications of frame millman, boring, assembly, sanding, lumber, cutting, and general employees employed by the Employer at its San Francisco, California facility; excluding all other employees, guards and supervisors as defined in the Act.

(d) Bypassing the Union and dealing directly with unit employees by meeting with employees to obtain their approval for changes in terms and conditions of employment.

(e) Failing and refusing to bargain collectively about wages and pension benefits for unit employees, pursuant to the reopener clause of the Agreement.

(f) Failing and refusing to bargain collectively about grievances filed under the Agreement.

(g) Unilaterally altering the established practice of permitting union representatives access to its facility and denying employees, during nonworking time, contact with a union representative.

(h) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Refugio Lopez immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest, as set forth in the remedy section of this Decision.

(b) Expunge from its files any and all references to the unlawful discharge, and notify the discriminatee, in writing, that this has been done.

(c) Honor the terms of the Agreement, including, inter alia, those regarding working hours, the method of payment, payment of accrued pay, holiday pay, and regular wages, and payment of yearend bonuses, and make whole the unit employees for any losses resulting from its failure to do so, with interest, as set forth in the remedy section of this Decision.

(d) Restore the status quo ante with regard to the previously established practice regarding access of union representatives to the Respondent's facility and unit employees' contact with a union representative during nonworking time.

(e) Meet and bargain with the Union with respect to wages and pension benefits for the unit employees pursuant to the reopener provision, and with respect to grievances that have been filed under the Agreement and, if an understanding is reached, embody that understanding in a signed agreement.

(f) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(g) Post at its facility in San Francisco, California, copies of the attached notice marked "Appendix."[1] Copies of the notice, on forms provided by the Regional Director for Region 20, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(h) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. March 29, 1995

William B. Gould IV, Chairman

Charles I. Cohen, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

## APPENDIX

### NOTICE TO EMPLOYEES
### POSTED BY ORDER OF THE
### NATIONAL LABOR RELATIONS BOARD
### An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT inform our employees that it would be futile for them to select or to seek to maintain the Carpenters Union Local 2236, United Brotherhood of Carpenters and Joiners of America as their bargaining representative.

WE WILL NOT deny employees accrued vacation pay, holiday pay, and regular wages or discharge them because they assist the Union or engage in concerted activities, or to discourage employees from engaging in these activities.

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

WE WILL NOT fail to continue in effect all the terms and conditions of the collective-bargaining agreement effective from January 1, 1992, to December 31, 1994, between the Union and Pacific Green Company, by which terms and conditions we agreed to honor and abide, by changing working hours of unit employees, by changing the method of payment for unit employees, and by denying unit employees accrued pay, holiday pay, and regular wages, or failing to pay yearend bonuses to unit employees, without bargaining with the Union and without the Union's consent. The unit includes the following employees:

> All production employees in the job classifications of frame millman, boring, assembly, sanding, lumber, cutting, and general employees employed by us at our San Francisco, California facility; excluding all other employees, guards and supervisors as defined in the Act.

WE WILL NOT bypass the Union and deal directly with unit employees by meeting with employees to obtain their approval for changes in terms and conditions of employment.

WE WILL NOT fail or refuse to bargain collectively about wages and pension benefits for unit employees, pursuant to the reopener clause of the Agreement.

WE WILL NOT fail or refuse to bargain collectively about grievances filed under the Agreement.

WE WILL NOT unilaterally alter the established practice of permitting union representatives access to our facility or deny employees, during nonworking time, contact with a union representative.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer Refugio Lopez immediate and full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed and make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him, with interest.

WE WILL expunge from our files any and all references to the unlawful discharge, and notify Refugio Lopez, in writing, that this has been done.

WE WILL honor the terms of the Agreement, including, inter alia, those terms regarding working hours, the method of payment, payment of accrued pay, holiday pay, and regular wages, and payment of yearend bonuses, and make whole our unit employees, for any losses resulting from our failure to do so, with interest.

WE WILL restore the status quo ante with respect to the previously established practice regarding access of union representatives to our facility and unit employees' contact with a union representative during nonworking time.

WE WILL meet and bargain with the Union with respect to wages and pension benefits for our unit employees, pursuant to the reopener provision and with respect to grievances that have been filed under the Agreement, and, if an understanding is reached, embody that understanding in a signed agreement.

RIDGE VIEW INDUSTRIES, INC., LTD.,
D/B/A PACIFIC ATLAS COMPANY